IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 500 OF 1988

Tukaram Genu Shinde,
Age 57 years, Occ.: Agriculture,
residing at Bothare, Tal.Karmala. .... Appellant.
(Org.Defendant.)

Versus.

1. Janardhan Manohar Shinde,
deceased by his heirs & LRs.

1A) Girjabai Janardhan Shinde,
Age: 57, Household work of
Bothare, Taluka Karmala.

1B) Muktabai Sarjerao Kale,
Age: 56, Household work at
Weet, Taluka Karmala.

1C) Draupadabai Sitaram Nanavare,
Age: 42, Household work of
Pothare, Taluka Karmala.

1D) Shakuntala Bhiomrao Pol,
Age: 27, Household work of
Satfal (Nagobache) Tal.Karmala.

1E) Shobhabai Jivraj Pol,
Age: 22, Household work of
Satfal (Nagobache) Tal.Karmala.

1F) Shardabai Janardhan Shinde,
Age: 13, Minor by guardian
mother No.1A.

1G) Surekha Janardhan Shinde,
Age: 12 minor by guardian 1A.

1H) Vijaya Janardhan Shinde,
11, Minor by guardian 1A.

2. Balnath Janardhan Shinde,
age 59, Agriculturist of
Pothare, Taluka Karmala.

3. Vasant Janardhan Shinde,
Age: 32, Occupation & residence

as above.

4. Baban Janardhan Shinde,
Age: 30 Occupation and
residence as above.

5. Chhagan Janardhan Shinde,
Age: 28, occupation &
residence as above.

6. Popat Janardhan Shinde,
Age: 16, Occ.: Education,
minor by Guardian No.1A. .... Respondents.
(Org.Plaintiffs)

Shri S.G.Kudle for the Appellant.

Shri K.Y.Mandlik for the Respondents Nos.1A to 1H, 2 to 6.

CORAM : ABHAY S. OKA, J.

DATED : 30th August, 2004.

ORAL JUDGMENT.

1. On 5th October 1988, the Second Appeal was admitted by passing the following order:

> . Admit.
>
> . Substantial question of law is as follows:
>
> 1. Whether the Civil Court had jurisdiction to decide a dispute arising under the provisions of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947.

2. Whether a certificate under section 24 of the said Act was necessary in this transaction.

Therefore, the first question framed by this Court is as regards the jurisdiction of the Civil Court to decide the dispute under the provisions of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 (hereinafter referred to as "the said Act of 1947"). The second question is whether the certificate under section 24 of the said Act of 1947 is required to be issued before the allottee of a block number of gat number claims title in respect of the property in question. With a view to appreciate the submissions which are made by the learned Counsel appearing for the parties, it will be necessary to refer to the facts of the case.

2. The Appellant is the original Defendant and the Respondents are the original Plaintiffs. The Plaintiffs claim to be the owners of certain lands which are described in paragraph 2 of the plaint with reference to its survey numbers. The case of the Respondents is that for the village in which the said lands are situated the provisions of the said Act of 1947 were applied and a consolidation scheme was framed. The case of the Respondents is that in lieu of the land which are

described in paragraph 2 of the plaint, the property bearing Gat No.275 was allotted to the Respondents and in lieu of the properties held by the Appellant land bearing Gat No.276 was allotted to him. The case is that the parties were placed in possession of the respective Gat numbers. The case of the Respondents is that they were dispossessed by the Appellant of property bearing Gat No.275 and therefore, the suit for possession came to be filed.

3. The suit was resisted by the Appellant by filing Written Statement. One of the contentions raised was that in view of the provisions of the said Act of 1947 the Civil Court has no jurisdiction to entertain and try the suit. In the Written Statement the fact that land bearing Gat No.275 was allotted to the Respondents under the consolidation scheme and that land bearing Gat No.276 was allotted to the Appellant is not disputed. However, it is contended that the parties were not put in possession of the respect Gat numbers and the possession of the properties forming part of their original holding was continued.

4. The learned trial Judge decreed the suit. The learned trial Judge held that as the suit of the Respondents proceeds on the footing that the Appellant

has no right to occupy Gat No.275 and therefore, the Appellant is a trespasser, the Civil Court will have jurisdiction to entertain and try the suit. The trial Court decreed the suit for possession. An appeal was preferred by the Appellant/Defendant before the District Court and the said appeal was dismissed. The Appellate Court held that in view of the allotment of Gat No.275 to the Respondents in consolidation scheme, the Respondents have established their title and therefore, the Respondents are entitled to possession. Being aggrieved by the said Judgments and Decrees passed by both the Courts below, the Appellants have preferred this Second Appeal.

5. Shri Kudle, the learned Counsel appearing for the Appellant submitted that though the trial Court framed issue of jurisdiction and decided against the Appellant, the Appellate Court has not touched the said issue at all. He submitted that on a plain reading of section 36 of the said Act of 1947, the Civil Court has no jurisdiction to entertain and try the suit. He submitted that as certificate contemplated by section 24 of the said Act of 1947 was not issued in favour of the Respondents, the Respondents cannot claim title on the basis of the entries made in the consolidation scheme. He submitted that under the consolidation scheme the

possession of the respective gat numbers allotted to the parties was not delivered and the parties continued to be in possession of their original survey numbers. He therefore submitted that the Respondents had no title on the basis of which the suit for possession could have been filed.

6. Shri Mandlik, the learned Counsel appearing for the Respondents relied upon the Judgment of the learned Single Judge of this Court reported in 1993 Mah.L.J. page 1291 (Prabhakar Kushaba Hagwane & ors. v/s. Yeshwant Bhau Hagwane, since deceased by LRs.)) and submitted that vesting of title under the scheme is not dependant on the grant of certificate of transfer under section 24 of the said Act. He submitted that there is no remedy available for the Respondents to file a suit for possession under the provisions of the said Act of 1947.

7. I have considered the rival submissions. So far as the issue of jurisdiction is concerned, it is true that the Appellate Court has not dealt with the said issue. In paragraph 5 of the said judgment of the Appellate Court, the submissions made by the learned Counsel for the Appellant before the District Court have been summarised. From the contents of paragraph 5 it appears

that the issue of jurisdiction was not canvassed specifically before the Appellate Court. However, as substantial question of law has been framed by this Court on this issue, I have to consider the submissions made by the learned Counsel for the Appellant.

8. The suit filed by the Respondents proceeds on the footing that a particular Gat number was allotted to the Respondents in the consolidation scheme and thus the Respondents have become owners of the said gat number. The case made out is that the Appellant has encroached upon the said gat number and therefore, the suit for possession is filed. The issue of jurisdiction has to be decided on the basis of the averments made in the plaint. The Appellant/Defendant may have some grievance about the orders passed under the consolidation scheme. However, as the plaint stands, the suit does not involved any question which is to be decided or dealt with under the provisions of the said Act of 1947. That is why the trial Court recorded a finding that as the Appellant is alleged to be a trespasser, jurisdiction of the Civil Court is not ousted. Paragraph 7 of the judgment of the learned Single Judge in the case of Prabhakar Hagwane (supra) reads thus :

"7. Had Civil Court jurisdiction to try this

suit in view of section 36A is the second question of law, raised before me. Section 36A mentions that no Civil Court or Mamlatdar's Court has jurisdiction to settle, decide or deal with any question which is by or under this Act required to be settled, decided or dealt with by the State Government or any officer or authority. Sub-section (2) of that section mentions that no order of the State Government or any such officer or authority made under the Act shall be questioned in any Civil, Criminal or Mamlatdar's Court. Now, the Plaintiff had filed this suit on the basis that he has been illegally dispossessed of the property subsequent to his acquisition of the title under the Act. The Defendants have disputed this fact. Quite clearly the dispute of this nature would fall within the jurisdiction of the ordinary civil Court. No provision of the Act is brought to my notice under which it could be said that the controversy, like this, is required to be settled, decided or dealt with under the Act either by the State Government or any officer or authority. Under the circumstances, the submission that

the Civil Court had no jurisdiction to try the suit, is without any merit."

In view of this position of law, the jurisdiction of the Civil Court to decide the suit was not ousted.

9. So far as the second substantial question of law, which is framed in this appeal is concerned, it is to be noted that there is no dispute between the parties so far as the allotment of Gat No.275 to the Respondents is concerned. Before the trial Court evidence was led by the Respondent by examining the District Inspector of Land Records. He stated on oath that the scheme was confirmed and executed and the land bearing old survey No.124(1)(A) and 127(1)(A) were exchanged during the consolidation scheme. Possession receipts were also produced before the trial Court which were admitted in evidence. Therefore, the trial Court accepted the case made out by the Respondents that the consolidation scheme was implemented and that the Respondents were put in possession of the Gat numbers allotted to them under the said Scheme. The said finding recorded by the trial Court has not been upset by the appellate Court. In view of the evidence which is on record in the form of oral evidence and the documents particularly the possession receipts, there is no reason to upset the

said finding of fact recorded that the consolidation scheme has been implemented.

10. It appears from the record that no certificate under section 24 of the said Act was granted in favour of the Respondents. In this behalf it will be necessary to refer to paragraph 6 of the Judgment of the learned Single Judge of this Court reported in the case of Prabhakar Hagwane (supra), which reads as under:

> "6. Section 22 mentions that as soon as the persons entitled to possession of holdings under this Act, are entered into possession of the holdings, the scheme shall be deemed to have come into force. Section 24 mentions that the Consolidation Officer shall grant to the owner to whom a holding has been allotted in pursuance of the scheme, a certificate in the prescribed form duly registered under the Indian Registration Act to the effect that the holding has been transferred to him in pursuance of the scheme. Close scrutiny of Chapter III in general and sections 22 and 24 in particular will indicate in no uncertain terms that the scheme is complete as soon as possession is delivered. Issuance of a

> transfer certificate is a matter of procedure and is only an evidence of the transfer which has already taken place. Vesting of the title in the consolidation of holdings, thus, does not depend upon the grant of certificate of transfer, or in other words, transfer is not effected on the basis of the transfer certificate. Under the circumstances, conclusion is inevitable that the Plaintiff has become the owner of the property even before issuance of a certificate under section 24."

It is, therefore, very clear that the failure of grant to certificate under section 24 cannot affect the title of the Respondents. Therefore, there is no substance in the second contention of the Appellant.

11. The Civil Court has only decided the question of title on the basis of the consolidation scheme. If the Appellant had any grievance about the consolidation scheme it was for him to adopt any appropriate remedies under the said Act of 1947. No interference is called for in the Second Appeal under section 100 of the said code. The Second Appeal is, therefore, dismissed with no order as to costs.

12. At this stage, the learned counsel appearing for the Appellant submitted that the decree for possession shall not be allowed to be executed for a reasonable time so that the Appellant can avail of the remedy under the said Act of 1947. The said request is opposed by the learned Counsel for the Respondents. Considering the facts and circumstances, the decree for possession passed by the trial Court shall not be executed for a period of six months from today. It is made clear that the proceedings which may be taken out by the Appellant before the concerned authorities will be decided on its own merits.

13. Certified copy expedited.

Judge.